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CHAN LAW GROUP LC  
1055 W. 7TH ST,  
SUITE 1880  
LOS ANGELES, CA 90017

EXAMINER

SMITH, JAMES G

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/881,140

Applicant(s)

LEE, RAZGO

Examiner

James G Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Response to Arguments***

1. Applicant's arguments filed 11/1/2002 have been fully considered but they are not persuasive. Applicant argues that Cunliffe is not capable of supporting the bill without the structural rigidity provided by the crown portion, so the band and the crown elements of Cunliffe must be taken together and not separated as suggested by Examiner. Applicant argues that Cunliffe does disclose a bill or visor, it does not disclose or claim a type of head wear known in the art as a visor. Applicant's amended claims do not distinctly differ from what is disclosed by Cunliffe. What is the difference between Cunliffe and the instant invention? Applicant argues the Cunliffe band element is formed from two parts. The components making up the band of Cunliffe provide all the benefits of the claimed invention and the difference is negligible. Is the band in the instant application one piece? The claims are silent to the single piece requirement. Applicant argues that Cunliffe does not disclose a multilayer, non-stretchable sweat absorbing material "being attached to the headband." Applicant states that the sweat absorbing structure in the Cunliffe band is within and integral to the band. The claims are silent to the band being multilayer. "One or more layers" allows one to understand that the band be as claimed at least one layer. Applicant argues that the combination of the stretchable sweatband sewn to the inner surface of an "outer portion" does not anticipate each and every element as set forth in the applicant's device. Although applicant argues that they do not disclose a structure that would satisfy the definition of a sweatband the reference reads on the invention as claimed. While it may be a sweatband it reads on the claim for a headband. What is claimed that differentiates the two? Applicant argues that Whang uses a combination of non-stretchable bias cut fabric and an

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inner sweatband to achieve a fir [sic] the head of the wearer and that Whang also teaches that all hats require a stiff crown to hold up the brim. What is taught in Whang is taught for that invention and should not be construed the same for all structures. Applicant points out the necessary requirements for a cantilever structure. However, it is firmly believed that once the band and brim of Cunliffe are worn the structural rigidity to hold the brim in place will be achieved due to the compression of the band and shape of the wearer's head in contact with the brim. Therefore, all arguments answered the following rejections are reasoned. Where in the claims are these components said to be unusable in the instant invention?

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 10, 11, 12 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Cunliffe (5,966,742). Cunliffe discloses a self-sizing visor having a headband made of multiple elongated rectangular pieces. The headband loop, having an inner and an outer surface, has a visor portion extending from the front portion of the bottom edge of the headband loop.

With respect to Claims 2 and 3, the headband material of Cunliffe's visor is referred to as bi-axially stretchable (claim 1).

With respect to Claim 4, Cunliffe discloses a multi-layer sweat absorbing material in the front of the visor, being attached to the headband (FIG. 1, detail 16).

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With respect to Claims 10, 11, 18 and 19, Cunliffe discloses a headband portion of an adjustable cap having at least one of the edges being curvilinear and at least one of the edges being straight.

With respect to Claim 12, Cunliffe discloses an adjustable cap having headband comprised of one or more headband segments. The headband segments being connected forming an elongated four edge band. The two ends of the band are connected to form a closed loop

With respect to Claim 16, Cunliffe discloses a headband segment being sweat absorbent.

With respect to Claim 17, Cunliffe discloses a headband comprised of multiple sections, some being bi-axially stretchable and others being non stretchable.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cunliffe (5,966,742). It would have been obvious to one of ordinary skill in the art at the time the invention was made to choose the length (viz. "short" or "long") since it has been held the general conditions of a claim are disclosed in the prior art, discovering optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunliffe (5,966,742) in view of Fleitman (5,377,360). Cunliffe essentially teaches a self-sizing visor

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having a headband. However, Cunliffe fails to disclose the shape of the headband to be at it widest width at the wearer's forehead and be tapered to it smallest width in the rear of the wearer's head. Fleitman discloses a headband with a widest width being at the wearer's forehead and tapering off towards the back so that improper puckering of the fabric does not occur. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the cap of Cunliffe with the headband of Fleitman to make for a self-sizing headband that does not pucker.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cunliffe (5,966,742) in view of Dalton (4,491,985). Cunliffe essentially teaches a self-sizing visor having a headband. However, Cunliffe fails to disclose the shape of the headband being at its narrowest width at the wearer's forehead and the widest width in the rear. Dalton discloses a headband having the narrowest width at the wearer's forehead and the widest width in the rear for added comfort to the wearer. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the cap of Cunliffe with the headband of Dalton to make for a self-sizing headband that is more comfortable to the wearer.


8. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cunliffe (5,966,742). Cunliffe discloses a self-sizing headband comprised of multiple segments, but does not specifically disclose whether the different segments are the same color or different colors. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the cap of Cunliffe by either making the different segments of the headband the same color or different colors to enhance the aesthetic appeal of the headband.

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*Conclusion*

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

  
JOHN D. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G Smith whose telephone number is 703-605-4225. The examiner can normally be reached on 8:00-5:00, off every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J Calvert can be reached on 703-305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-308-0758 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

JGS  
January 27, 2003

  
JOHN J. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700